

## STATE OF VERMONT

In re ) Fair Hearing No. 20,401  
 )  
Appeal of )

# INTRODUCTION

The petitioner appeals from a decision by the Department for Children and Families, Health Access Eligibility Unit terminating her Vermont Health Access Program (VHAP) coverage. The issue is whether petitioner's distribution of monthly payments from her Individual Retirement Account should be treated as unearned income. The IRA distributions place petitioner over the income limits for the VHAP program. The petitioner is represented by Graham Forward of the Office of Health Care Ombudsman, and the Department is represented by Seth Steinzor, Assistant Attorney General. The findings of fact are based on the stipulation of the parties.

## FINDINGS OF FACT

1. Petitioner was found eligible for VHAP before December 2005.
2. Petitioner is presently unemployed and seeking disability benefits from the Social Security Administration.
3. To support herself, petitioner has been withdrawing \$2,000 per month from an Individual Retirement Account (IRA). Petitioner has no other source of income. Because petitioner

is younger than fifty-nine and a half years, petitioner's distribution is subject to taxes and a ten percent penalty. The bank withholds \$354 per month for taxes leaving petitioner with \$1,646 per month.

4. The Department sent petitioner a notice dated April 19, 2006 terminating her VHAP benefits. Petitioner filed a timely appeal and was granted continuing benefits.

5. The VHAP income limit for a household of one is \$1,232.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Legislature created the VHAP program to expand the availability of health care to low income Vermonters who are uninsured or underinsured. 33 V.S.A. §1973(b). Welfare Assistance Manual (W.A.M) §§ 4000 *et seq.* To be eligible, the household's countable income must meet the income test. W.A.M. § 4001.8.

Petitioner is a household of one and must have income no more than \$1,232 per month to qualify for VHAP. Medicaid Procedures P 2420(B). Petitioner is now unemployed with no source of income. Petitioner has elected to have the bank distribute \$2,000 per month from her IRA so she can meet her

living expenses. With deductions for taxes, petitioner actually receives \$1,646 per month.

The Department considers the IRA distribution unearned income. The IRA distribution is greater than the eligibility levels leading the Department to find petitioner over income for VHAP. The Department relies on W.A.M. § 4001.81(b) which states:

Unearned income includes, but is not limited to, the following:

Income from pension and benefit programs, such as social security, railroad retirement, veteran's pension or compensation, unemployment compensation, and employer or individual private pension plans or annuities.

. . .

Unearned income does not include the following:

Infrequent or irregular voluntary cash contributions or gifts . . . received from friends or relatives.

In-kind income.

Five percent of a VA monthly award that is retained by a guardian.

The Department argues that the IRA distributions are in the same class as income from pension and benefit programs. IRA distributions are not excluded under W.A.M. § 4001.81(b) nor are they excluded under W.A.M. § 4001.82.

The petitioner makes the novel argument that the IRA distributions should not be considered unearned income

because an IRA is not a pension or benefit program but akin to a savings account and, thus, not covered in the definition of unearned income.

Petitioner's argument is problematic for several reasons. The examples given in W.A.M. § 4001.81(b) are illustrative—they are examples of the types of monies coming into a household on a regular basis that fall within unearned income. The same can be said of the examples of retirement income. Moreover, the list includes "individual private pension plan"; an IRA is an "individual private pension plan". W.A.M. § 4001.81(b).

An IRA is one way that individuals can plan for an income stream during their retirement. See 26 U.S.C. § 408 (general rule for IRA set out under Part I—Pension, Profit-Sharing, Stock Bonus Plans, etc.). Congress built in certain tax deductions to encourage individuals who do not participate in a pension plan through their employer, who do participate in employer plans but meet certain guidelines, or whose employer does not offer pension plans, to set aside funds for their retirement. In addition to building in tax advantages, Congress built in disincentives to prevent individuals from withdrawing funds early and dissipating their retirement income. An IRA's purpose is the same as any other type of pension or retirement account. By analogy, if

you look at the Medicaid program, any form of cash payment is considered income. M § 240. IRA's would be considered a form of unearned income along with private pensions. M § 241.

Unfortunately, petitioner finds herself in a situation in which she needs to withdraw monies from her IRA to meet her monthly expenses. If her monthly withdrawals fell within the eligibility criteria, she would remain eligible for VHAP.

Petitioner also argues that withdrawals from an IRA should be treated in the same way as windfall lump sum.

However, periodic payments are not the same as a lump sum.<sup>1</sup>

In conclusion, income from petitioner's IRA is the same as income from an "individual private pension plan" and must be considered unearned income pursuant to W.A.M. § 4001.81(b). The Department's finding that petitioner is over income for the VHAP program should be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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<sup>1</sup> Petitioner's other arguments regarding the operation of an IRA as opposed to a pension are a bit confused. As an example, they do not show an understanding of the similarities between an IRA and a defined contribution plan in terms of participant control as well as the being confused about the differences between withdrawing from a savings account as opposed to withdrawing from an IRA.